



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0931; FRL-9541-02-R8]

Air Plan Conditional Approval; Colorado; Revisions to Regulation Number 7 and Oil and Natural Gas RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving portions of State Implementation Plan (SIP) revisions submitted by the State of Colorado on May 14, 2018 and May 13, 2020. The revisions are to Colorado Air Quality Control Commission (Commission or AQCC) regulations of ozone precursor and hydrocarbon emissions from oil and gas operations, and address Colorado's SIP obligation to require reasonably available control technology (RACT) for sources covered by the 2016 oil & natural gas control techniques guidelines (CTG or CTGs) for Moderate nonattainment areas under the 2008 ozone National Ambient Air Quality Standard (NAAQS). These revisions address the final pieces of the May 14, 2018 and May 13, 2020 submittals that we have not previously acted on. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2021-0931. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard

copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6563, email address: fulton.abby@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our February 17, 2022 proposal.¹ We proposed to conditionally approve various revisions to the Colorado SIP that were submitted to the EPA in two separate SIP submittals, which the EPA received on May 14, 2018, and May 13, 2020. In particular, we proposed to conditionally approve into the SIP certain Reg. 7 rules to meet the 2008 8-hour ozone NAAQS oil and gas CTG RACT requirements for Moderate nonattainment areas that were not acted on in our July 3, 2018,² February 24, 2021,³ and November 5, 2021⁴ rulemakings. The proposal describes the background for this action, explains the revisions in detail, and the explains rationale for the EPA’s proposed actions.

II. Comments

There were no comments received on the proposal.

III. Final Action

¹ 87 FR 8997.

² Final Rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 31068, 31069-31072.

³ Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 11125, 11126 -11127.

⁴ Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 61071, 61072.

The EPA is conditionally approving revisions to Sections XII.J.1 of Reg. 7 from the State's May 14, 2018 submittal and Part D, Sections I.D., I.E., I.F., and I.J.1. of Reg. 7 from the State's May 13, 2020 submission as shown in Table 1.

The EPA is conditionally approving revisions to Reg.7, Part D, Sections I.E.3. (including subsections (a)(i) through (iii)) and I.J.1.g.through i. Additionally, the EPA is conditionally approving Colorado's determination that Reg. 7, Part D satisfies RACT requirements for the Colorado ozone SIP for the 2016 oil and natural gas CTG. Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by a state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. On October 20, 2021, Colorado submitted a letter committing to adopt and submit specific revisions by June 30, 2022.⁵ Specifically, the State has committed to add requirements for performance testing of certain combustion devices consistent with the EPA's oil and gas CTG by using the same frequency, testing protocol, and recordkeeping requirements that will apply to storage vessels and wet seal centrifugal compressors required to be controlled under the EPA's oil and gas CTG (i.e., storage vessels that have the potential for VOC emissions equal to or greater than 6 tpy). Now that we are finalizing our conditional approval, Colorado must adopt and submit the specific revisions it has committed to by June 30, 2022 in order for the conditional approval to convert to full approval. We note that the Colorado AQCC adopted the revisions as outlined in the commitment letter on December 17, 2021, and we anticipate that the State will meet its deadline to submit these measures as SIP revisions. However, if Colorado does not comply with its commitment by June 30, 2022, if we find Colorado's SIP submission provided to fulfill the commitment to be incomplete, or if we disapprove the SIP submission, this conditional approval will convert to a disapproval. If any of these occur and our conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element

⁵ Although CAA section 110(k)(4) allows the EPA to make a conditional approval based on a commitment to act within one year of the final conditional approval, Colorado has committed to act on a much more accelerated schedule.

under part D of title I of the Act, which will start an 18-month clock for sanctions⁶ and the two-year clock for a federal implementation plan.⁷

Table 1- List of Colorado Revisions to Reg. 7 that the EPA is Conditionally Approving

Revised Sections in May 14, 2018 and May 13, 2020 Submittals for Conditional Approval.
<i>May 14, 2018 Submittal</i>
XII.J.1
<i>May 13, 2020 Submittal</i>
Part D, Sections I.D.–D.3.a.(i), I.D.3.b.–b.(i), I.D.3.b.(ii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.D.4.–I.E.1.a., I.E.2.–c.(ii), I.E.2.c.(iv)–c.(viii), I.F.–1.d., I.F.1.g.–g.(xii), I.F.1.h.–F.2.a., I.F.2.c.–c.(vi), I.F.3.–3.a, I.F.3.c.–c.(i)(C), and I.J.1.–j. (renumbering).
<i>Revised Sections from Colorado’s Oct. 20, 2021 Commitment Letter</i>
Part D, Sections I.E.3.–a.(iii), I.J.1.g.–h., I.J.1.i., and I.J.1.i.(i)(E)–(F).

IV. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state be adopted by the state after reasonable notice and public hearing.

The Colorado SIP revisions that the EPA is conditionally approving do not interfere with any applicable requirements of the Act. The Reg. 7 revisions submitted by the State on May 13, 2018 and May 14, 2020 are intended to strengthen the SIP and to serve as RACT for certain sources for the Colorado ozone SIP. Colorado’s submittals provide adequate evidence that the revisions were adopted after reasonable public notices and hearings. Therefore, CAA section 110(l) requirements are satisfied.

V. Environmental Justice Considerations

⁶ See CAA section 179(a)(2).

⁷ See CAA section 110(c)(1)(B).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law.

To identify potential environmental burdens and susceptible populations in the DMNFR area, a screening analysis was conducted using the EJScreen⁸ tool to evaluate environmental and demographic indicators within the area, based on available data from the Census Bureau’s American Community Survey. The results of this assessment are discussed in detail in our February 17, 2022 proposal.⁹

As explained in our February 17, 2022 proposal, we believe that this action will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns, and will contribute to the increased protection of those residing, working, attending school, or otherwise present in those areas.

VI. Incorporation by Reference

In this document, the EPA is finalizing regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference Colorado AQCC Regulation 7 pertaining to the control of ozone via ozone precursors and control of hydrocarbons from oil and gas emissions. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by

⁸ EJSCREEN is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; available at <https://www.epa.gov/ejscreen/what-ejscreen>.

⁹ 87 FR 8997.

reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's conditional approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁰

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

¹⁰ 62 FR 27968 (May 22, 1997).

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 9, 2022.

KC Becker,
Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Add §52.319 to subpart G to read as follows:

§52.319 Conditional approval.

(a) The EPA is conditionally approving portions of the Colorado SIP revisions submitted on May 14, 2018 and May 13, 2020. The conditional approval is based upon the October 20, 2021 commitment from the State to submit a SIP revision consisting of rule revisions that will cure the identified deficiencies by June 30, 2022. If the State fails to meet its commitment, the conditional approval will be treated as a disapproval with respect to the rules and CTG category for which the corrections are not met. The following are conditionally approved:

(1) Regulation number 7, Section XII.J.1. from the May 14, 2018 submittal and Part D, Sections I.D.–D.3.a.(i), I.D.3.b.–b.(i), I.D.3.b.(ii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.D.4.–I.E.1.a., I.E.2.–c.(ii), I.E.2.c.(iv)–c.(viii), I.F.–1.d., I.F.1.g.–g.(xii), I.F.1.h.–F.2.a., I.F.2.c.–c.(vi), I.F.3.–3.a, I.F.3.c.–c.(i)(C), and I.J.1.–j. from the May 13, 2020 submittal.

(2) Colorado’s determination that Reg. 7, Part D satisfies 2008 ozone NAAQS SIP RACT requirements for the following category, “Control Techniques Guidelines for the Oil and Natural Gas Industry” EPA-453/B-16-001, October 2016.

(b) [Reserved]

3. In §52.320:

a. In the table in paragraph (c), revise the entry for “I. Volatile Organic Compound Emissions from Oil and Gas Operations” under the heading “5 CCR 1001-09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas

Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part D, Oil and Natural Gas Operations”; and

b. In the table in paragraph (e), under the subheading “Denver Metropolitan Area”, add an entry for “Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)” after the entry “2008 Ozone Moderate Area Attainment Plan”.

The revision and addition read as follows:

§52.320 Identification of plan.

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(c) * * *

Title	State effective date	EPA Effective date	Final rule citation/date	Comments
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5 CCR 1001-09, Regulation Number 7, Control of Ozone Via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions, (Emissions of Volatile Organic Compounds and Nitrogen Oxides), Part D, Oil and Natural Gas Operations				
I. Volatile Organic Compound Emissions from Oil and Gas Operations	2/14/2020	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	Previous SIP approval 2/13/2008. Substantive changes to Section XII; state-only provisions excluded, approved 7/3/2018. Substantive changes approved 11/25/2021 except no action on Sections I.D., I.E., I.F. and I.J.1. Conditional approval of Sections I.D., I.E., I.F., and I.J.1. [insert date of publication in the Federal Register]
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Title	State effective date	EPA ffective date	Final rule citation/date	Comments
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Denver Metropolitan Area				
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Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)	11/21/2017	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	Previous SIP approvals 7/03/2018, 2/24/202, and 11/05/2021. Conditional approval of oil and gas RACT [insert date of publication in the Federal Register] .
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[FR Doc. 2022-10212 Filed: 5/12/2022 8:45 am; Publication Date: 5/13/2022]